

JUDGE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,) NO. CR15-029RAJ
Plaintiff,)
v.) REPLY TO GOVERNMENT'S
BRIAN FARRELL,) RESPONSE TO DEFENDANT'S
Defendant.) MOTION TO REDUCE SENTENCE

Brian Farrell, through Assistant Federal Public Defender Nancy Tenney, submits this reply regarding the government's response (Dkt. 92) to his motion for compassionate release, pursuant to 18 U.S.C. § 3582(C)(1) (Dkt. 89).

Several issues are not contested. The government agrees that Mr. Smith has exhausted his administrative remedies and that this Court has the authority to determine what circumstances constitute an “extraordinary and compelling” reason to justify relief. See Dkt. 92 at 7-8. The government disputes, however, that Mr. Farrell’s untreated medical conditions establish extraordinary and compelling circumstances and that a weighing of the 18 U.S.C. § 3553(a) factors warrant relief. The government’s arguments lack merit and Mr. Farrell’s motion should be granted.

A. Mr. Farrell's Untreated Medical Symptoms Constitute an Extraordinary and Compelling Reason for Release.

Mr. Farrell's medical records document an extraordinary and compelling basis for reducing his sentence. The records show that, despite the prison's own doctor

1 recommending in August of 2020 that Mr. Farrell see a cardiologist and undergo an
 2 echocardiogram, no such appointment has taken place to date. *See Exhibit A*
 3 (Supplemental Declaration of Dr. Marc Stern). The government's response offers no
 4 explanation for why the prison has failed to execute its own physician's order for either
 5 a consultation with a heart specialist or an echocardiogram for nearly ten months.

6 The government asserts that "it is not even clear that Farrell is ill" and that a
 7 recent x-ray showed no signs of cardiopulmonary disease. *See Dkt. 92 at 8.* As
 8 explained by Dr. Stern in his supplemental declaration, it "is not clear that Mr. Farrell is
 9 ill [only] because of the health care staff's failure to do what is necessary to make a
 10 diagnosis." *See Ex. A at 3.* Dr. Stern goes on to clarify that the x-ray only rules out
 11 certain cardiopulmonary diseases, but that not all cardiopulmonary diseases are visible
 12 on an x-ray. *Id.* at 2, fn. 1. Moreover, an x-ray also fails to rule out diseases other than
 13 those found in the cardiopulmonary system. *Id.* Because the Bureau of Prisons
 14 continues to ignore its own physician's orders, Mr. Farrell remains unable to diagnose
 15 or treat what may be a potentially serious cardiopulmonary (or other organ system)
 16 condition. These circumstances present an extraordinary and compelling reason to
 17 grant Mr. Farrell's motion for a reduced sentence.

18 **B. The Section 3553(a) Factors Weigh in Favor of Release.**

19 The goal of any sentencing is to impose a sentence "sufficient, but not greater
 20 than necessary" to meet the goals of 18 U.S.C § 3553(a). While Mr. Farrell's offense
 21 was serious, just punishment and deterrence do not require that Mr. Farrell remain
 22 confined without essential medical care, particularly when such care is easily accessible
 23 to him in the community. Moreover, Mr. Farrell has less than a year to his release date
 24 and thus has served the bulk of his 96-month sentence. During that time, he has
 25 completed the RDAP program to address his substance abuse issues, stayed out of
 26 trouble, and demonstrated his commitment to rehabilitation.

Furthermore, Mr. Farrell's release poses no danger to the community. Although
 his offense conduct caused harm, it did not involve violence, and he had no prior
 criminal history. As recognized in the Probation Officer's report verifying his proposed

1 release address, Mr. Farrell plans to reside with his parents who will provide a stable
2 environment and assist him in accessing necessary medical care. Any concerns
3 regarding Mr. Farrell engaging in further criminal conduct are mitigated by the
4 conditions of his three-year term of supervised release.

5 For these reasons, Mr. Farrell respectfully requests this Court grant his motion
6 and reduce his sentence to time served so that he can receive the medical necessary to
7 understand and treat his ongoing symptoms.

8 Dated this 29th day of April, 2021.

9 Respectfully submitted,

10 *s/ Nancy Tenney*
11 Assistant Federal Public Defender
12 Attorney for Brian Farrell